

1 TRANSRIPT OF JURY TRIAL EXCERPT

2 **DEFENDANT CLOSING ARGUMENT**

3 Transcribed From Audio Recording

4 * * *

5 THE COURT: Okay. Please be seated, ladies and
6 gentlemen.

7 (Jury in at 11:12 a.m.)

8 THE COURT: Okay. Please be seated, ladies and
9 gentlemen.

10 Mr. Brindley, you may proceed with your closing
11 argument.

12 MR. BRINDLEY: Thank you, Your Honor.

13 **DEFENSE CLOSING ARGUMENT**

14 MR. BRINDLEY: Ladies and gentlemen, after listening
15 to what we just heard from the government I think it's important
16 to start out with talking about what this case is not.

17 This case is not a medical malpractice case.

18 This case is not about whether Dr. Charles Szyman was
19 negligent or whether he should have or could have done more in
20 some particular case.

21 This case is not an ethical inquiry about whether
22 Dr. Charles Szyman acted as a doctor. We heard him say over and
23 over again acted as a doctor, but that's not in the instructions
24 you just heard from the court.

25 This is a criminal case. They are calling Dr. Charles

1 Szyman, a medical doctor, they're calling him a criminal. And
2 maybe there should be a lawsuit some day, maybe there should be
3 some other kind of inquiry from a medical board, whatever the
4 case may be, but they're calling a doctor a criminal.

5 And when we take a step back and we look at the big
6 picture, thinking about it that way, the resident question is
7 what are we doing here with this case? What are we doing with a
8 criminal case?

9 We know big-picture facts about Dr. Szyman is that
10 Charles Szyman is a doctor. We know from all the testifying
11 patients -- not from Dr. Szyman sitting up here on the witness
12 stand but from all the testifying patients -- that Dr. Szyman
13 always tried to help them. They all said it, "He was trying to
14 help me."

15 Setting aside all the things they might have done to
16 mislead him, he was trying to help. All of them said that. All
17 of them said he listened to their descriptions of pain and he
18 reacted to them. All of them said that. Every one.

19 And all of them said, setting aside whatever they lied
20 and all the extra things they did, they said, each of them, that
21 the medications he provided, they made their pains better. All
22 of them did.

23 So we've got a doctor where all the patients say he
24 always tried to help. We got a doctor where all the patients
25 say he improved my pain. He's a pain doc. So what are we doing

1 here in a criminal case?

2 All of these dosing errors we're talking about, people
3 had too much medication, all of them that we've heard about in
4 this case are caused by people lying to the doctor. All of
5 them. People lying to the doctor.

6 They've admitted -- the witnesses admitted lying. I
7 made it impossible by lying for him to evaluate my problem. I
8 made it impossible by lying for him to evaluate my degree of
9 pain because I lied to him.

10 They chose to lie. And by lying they chose to then go
11 on and sell medications. They made that decision to put him in
12 a place where he had the wrong impression of what their
13 situation was. They did that, not him.

14 They caused him to prescribe medications they didn't
15 use. Who caused that? They did. No prescriptions that people
16 didn't need would ever have happened if these folks would have
17 simply told the truth to their doctor.

18 Who in the world goes to the doctor with the intent
19 I'm going to lie and mislead the doctor and then think after the
20 fact the doctor is going to get blamed? Who did that ever make
21 sense to? It doesn't make sense at all.

22 They chose to manipulate a doctor who always tried to
23 believe them. They chose to take advantage of his compassion.
24 And you don't have to take it from him, they said that. He was
25 very compassionate, he was very concerned, and they chose to

1 take advantage of that fact. They chose to take advantage of
2 the fact he trusted them. They made those decisions. They
3 admitted. They sound pretty apologetic about it really for the
4 most part. They did it and Dr. Szyman is here on trial.

5 Ladies and gentlemen, the question becomes what was
6 Dr. Szyman's terrible crime? What was the fundamental thing
7 that he did wrong that brings him to this court?

8 Why does he end up in here? And it comes down to
9 really just one thing – he trusted these people too much. When
10 they told him things he accepted them. He trusted them too
11 much.

12 For God sake, trusting too much is not a crime. It's
13 an admirable quality, it's a hopeful quality. It's something
14 that's good for people to have, particularly doctors who we need
15 to be compassionate and looking out for the interests of the
16 patients who talk to them. Trusting too much, believing too
17 much, that's why he's here. And that is a sad and terrible fact
18 about this case.

19 But it is true that everybody from the patients who
20 chose to lie to him about either the side effects of the
21 medicine or what they were taking, how much they were taking,
22 how much they were keeping, if they just chose to tell the
23 truth, if these undercover agents had gone in there and just
24 chose to tell the truth, I don't really have any pain, I'm
25 trying to get pills, they wouldn't have gotten any pills.

1 If everybody told the truth he wouldn't be here. He's
2 here because other people lied. And that's not right from a
3 fundamental standpoint. We hear the phrase that lady justice is
4 supposed to be blind, but nobody ever said she was supposed to
5 be stupid. This is stupid. Other people lie and they put him
6 in a position where he's got a wrong impression and we call a
7 doctor a criminal? It's too much. And it shouldn't happen.

8 Dr. Szyman and Linda Kramer. Think about their
9 combined testimony together. And when you think about their
10 testimony, think about how they were, how they seemed, their
11 demeanor, their descriptions, their language in talking about
12 what they did. These are not underhanded people who are out
13 there trying to hustle drugs. For one reason is because they
14 had no reason to. They weren't being paid for it.

15 These guys are not drug dealers. They're not drug
16 dealers who hustle drugs on the corner, you know, they can take
17 the cash and put it in their pocket. He didn't get that. He
18 got nothing for these drugs being prescribed.

19 These were people. These aren't underhanded
20 characters trying to do something wrong, trying to give people
21 medicine that they don't need. Does he really think, is it
22 really his position that Dr. Charles Szyman was out there trying
23 to give people medicine because he wants them to get sold out on
24 the streets? There's no indication of that. That's a joke.

25 Do you think Linda Kramer, this lady that worked with

1 him for years, if he was some rogue doctor out there hustling
2 medications, not caring about the patients, do you think that
3 woman that you heard from would speak so well of him?

4 Linda Kramer's an honest lady. Dr. Szyman was an
5 honest doctor who worked for years to try to come up with
6 philosophies and treatments that worked. He's serious. He's
7 thoughtful. You heard him explain it. They wanted to trust
8 people. That's what Linda Kramer said, we wanted to trust them.
9 We hoped we could trust them. And they wanted to make people
10 better. And by heavens, isn't that what we want in a doctor?
11 Certainly. It is not a reason why he should end up in the
12 criminal court.

13 And if you take it right from there, from the
14 beginning, he's only in court because other people lied and he
15 wouldn't be here otherwise? Then we should be convicting him of
16 a crime.

17 It's -- not only the instructions the judge gave you
18 do not allow and I'm going to talk about that -- but the simple
19 fact -- simple common sense, simple fairness and morality says
20 that's black law. If other people lie then somebody else
21 shouldn't have to pay the penalty.

22 But that's what's happening to Dr. Charles Szyman in
23 every instance, from undercover agents that chose to lie to
24 patients that chose to lie. That's what happened to Dr. Charles
25 Szyman and that's not right. Too much trust is not today nor

1 has it ever been a crime.

2 And so when we get back to the big picture we are
3 indeed, after we've seen all of the evidence, left with two
4 truths. Dr. Charles Szyman is a doctor. And Dr. Charles Szyman
5 did his best to do his job with very difficult circumstances.
6 These patients were coming to him from other doctors and these
7 were patients who had -- everybody had tried everything and it
8 was failing.

9 He got the most difficult patients. He tried to work
10 with them. He tried to trust them. And then when they lie he
11 has to come to court and have prosecutors say you, Dr. Szyman,
12 you worked your whole life to be a doctor, you're a criminal,
13 you're a drug dealer? Is that right? Does anybody think that's
14 right? No.

15 But luckily for Dr. Szyman the legal instructions will
16 make it clear that it's not right and it can't be. Because for
17 all Mr. Jacobs -- he's not acting as a doctor, he's a drug
18 dealer, all of this, I want to talk about what the
19 law/instructions say. I want to talk about what you have to do
20 under the law.

21 But the legal instructions say and what Mr. Jacobs did
22 not mention was that the government must prove beyond a
23 reasonable doubt that Dr. Szyman knew that his prescriptions of
24 controlled substance at issue was outside the usual course of
25 medical practice and not for a legitimate medical purpose. They

1 had to prove beyond a reasonable doubt that he knew it and that
2 he intended to give people medication for something other than a
3 legitimate medical purpose.

4 That's an extraordinarily difficult thing for them to
5 prove in this case. Because where you're gonna be instructed
6 and -- is, you have to look at the entirety of the evidence.

7 Well, if you look at Dr. Szyman's demeanor while
8 testifying, his explanation of what he was doing and his
9 philosophy and the things that he had come to believe and all of
10 the work that he had done to come to his opinions about how to
11 treat people in this terrible situation with the most difficult
12 patients, if you're gonna say, well, he was providing medication
13 and he knew it, he knowingly provided medication for something
14 other than a legitimate medical purpose, then do you know what
15 you've gotta do? You've gotta tell us why. Why would he do it?
16 What is the other purpose?

17 See, because you can't say we've proved beyond a
18 reasonable doubt that a doctor was providing medications and he
19 knew he was giving them for some purpose other than a legitimate
20 one unless you can then turn around and say, by common sense,
21 here's the purpose why he was doing it.

22 MR. JACOBS: Judge, that's not a correct statement of
23 the law.

24 MR. BRINDLEY: That's a common sense argument, Judge.

25 THE COURT: Overruled.

1 MR. BRINDLEY: Think about it. If they have to prove
2 beyond a reasonable doubt that he knew that he was giving these
3 medications for something other than a legitimate medical
4 purpose, so they can do that beyond a reasonable doubt, then
5 what's the other purpose they're talking about? They haven't
6 gotten one because there isn't one because he didn't do that.

7 This is not one of the cases -- this case is not the
8 one that the statute is meant for. This statute is meant for
9 the doctors that are doing cash money. People want drugs that
10 they don't need and they come in and they give the doctor a
11 bunch of cash to put in his pocket, he gives them their
12 medicine. Okay? That's not what happened in this case.

13 He told you doctors get kickbacks, cash kickbacks from
14 these pharmaceutical companies to push their drugs to people
15 they know don't need them. That's not what happened in this
16 case. If they wanted to prove beyond a reasonable doubt
17 Dr. Szyman had some other purpose, then they should have sent
18 their undercovers in there in a legitimate way to check for
19 that. They should have sent them in there not making up this
20 intermittent pain story -- I'm going to talk about that plenty
21 later on -- not making up that story, they should have sent them
22 in there to look at Dr. Szyman and say, Doctor, I need to get
23 some pills, I don't have any pain, let me pay you for them. If
24 they think he's gonna do it for some other purpose, there you
25 go.

1 Did they do that? No. Why? Because they knew, they
2 knew darned well that he wouldn't do it. Why? Because he
3 wouldn't knowingly give them medicine for some nonmedical
4 purpose. If you don't have a purpose you can't prove it, it
5 doesn't make sense. The people this statute is after, the
6 kickbacks doctors and the cash doctors, he wasn't one.

7 There is no way, there is no way the government can
8 possibly prove that he knew and intended people to get medicine
9 for something other than a medical purpose because there's no
10 explanation whatsoever why he would do it or what that would be
11 and that's the end of the case. It's not that hard of a case.
12 It's an interesting one, but it's not that hard.

13 The only thing even hinted at was Mr. Jacobs yesterday
14 when he said, well, you have your salary. And he's making
15 \$350,000 a year. He had a good salary. He's been working for
16 years, he was a good doctor. Makes a good salary. And he said,
17 well, you get a bonus for new patients. Or something like that.
18 He said, yeah.

19 But the truth, the truth is that every patient's a
20 referral. Every one is a referral. Other doctors are sending
21 them all. So he has nothing to do with the numbers. The
22 numbers are coming in from other people. There's no reason for
23 him to do it.

24 And think about that a little bit more. Because it's
25 so important when you look at what the law really asks for.

1 This is a man who spent his life on being a doctor. This isn't
2 some quack that barely got his degree. This is a man who spent
3 his life, who's board certified, who's recognized by his peers
4 as an expert, who worked so hard for decades. Why in the world
5 would he risk all of that to give people medication they didn't
6 need for some nonmedical purpose when he had no reason to do it?
7 Why?

8 And when you can't answer that question, because there
9 is no answer, then you have to say no to the government in this
10 case. This is a case for a lawsuit someplace. This is not a
11 criminal case, because there's no way they can prove this.
12 There is no reason whatsoever they can identify for why he would
13 ever, ever do it. They've had every opportunity and they've
14 given you nothing.

15 Dr. Szyman explained his philosophy and his beliefs on
16 treating patients, about giving them the benefit of the doubt,
17 about the doctor/patient privilege, and about how he developed
18 his philosophy on high-dose opioids. Talking to other experts.

19 And it wasn't some whacky, crazy thing that sounded
20 like somebody made up. It was well thought out, it was
21 sensible. It cited medical information and medical literature.
22 It's something he believed. And if he's acting based on that
23 philosophy, then there's no way anyone could say they proved by
24 any standard, certainly not beyond a reasonable doubt, that he
25 was prescribing medicine intending and knowing it to be for some

1 purpose other than medical. Especially when we can't even
2 say -- and I'm going to be repeating this -- where we can't say
3 or figure out what the other purpose is, because there isn't
4 one.

5 You're gonna need -- one of the things you were
6 instructed on by the judge is that in making a medical judgment
7 concerning the right treatment for an individual patient,
8 physicians have discretion to choose among a wide range of
9 available options. Therefore, in determining whether Dr. Szyman
10 acted knowingly without a legitimate medical purpose, you should
11 examine all of his actions in the totality of the circumstances
12 surrounding his actions.

13 Well, if you look at the top of this, according to law
14 physicians have discretion -- that's what you're told -- under
15 the law they have discretion to choose between a wide range of
16 options. High-dose opiates are one option.

17 Dr. King -- although he didn't like to admit it and it
18 took a long struggle between he and I to get there -- but
19 Dr. King ultimately admitted there were a whole school of people
20 that believed in high-dose opiates. [Indiscernible]. And he
21 admitted that.

22 So when we're talking about that, that's an option.
23 And Dr. Szyman, the evidence tells you that he used discretion
24 to utilize them with a small group of patients, what he
25 considered to be truly high-dose opiates. And you know that

1 because he had 350 to 400 patients and there was just a tiny
2 percentage that we're talking about here high dose. What is
3 that? That is a doctor exercising his discretion to choose an
4 option for certain patients.

5 And the ones -- we'll talk about the undercovers
6 later. They did not get truly high-dose opiates according to
7 Dr. Szyman's opinion about what that was.

8 Setting them aside, you look at the other people who
9 really did and he really does say got high-dose opiates, and who
10 were they? They were patients who have been failed by every
11 other doctor. Every one of them said I went to this one, went
12 to that one, tried everything, I got nothing, my pain was -- all
13 I could do was go to Dr. Szyman because the other doctors said
14 you gotta go to Dr. Szyman, he's the only one that might be able
15 to help you.

16 And so he has a class of patients that are that
17 difficult that everything else has failed for that are
18 suffering. And he says for this small suffering group I will
19 exercise my discretion and I will offer high-dose opiates and
20 give them the choice and the chance to make that choice.

21 That's exactly what the law says he can do, use his
22 discretion to choose amongst a wide range of options. And the
23 fact that he was limiting it to this small group of patients
24 that we're talking about here, that tells you he was doing what
25 the law says. That tells you that he cannot be guilty of acting

1 knowingly without a legitimate medical purpose.

2 And on top of the fact that they cannot possibly prove
3 that he knowingly believed that he was giving people medicine
4 for no legitimate medical purpose, you also have been instructed
5 about good faith. If you find that Dr. Szyman acted in good
6 faith, that would be a complete defense for his charge -- this
7 charge because good faith on the part of Dr. Szyman would be
8 inconsistent with his acting knowingly and intentionally.

9 Now, ladies and gentlemen, has the government proven
10 that Dr. Szyman didn't act in good faith? Without bad faith
11 from him somehow he's not guilty, so where is the bad faith?
12 Where is the bad-faith action by Dr. Charles Szyman?

13 I'm not talking about he should have asked more
14 questions. I'm not talking he should have done a little bit
15 more, he should have been more skeptical. Not the should-haves
16 and the could-haves. Actual bad faith where he shows he's got a
17 bad intention, where is that?

18 You are instructed a person acts in good faith when he
19 or she has an honestly-held belief of the truth of the
20 statements being given to him even though the belief turns out
21 to be inaccurate or incorrect. That is the law.

22 And isn't that exactly our case? People lied to him
23 and he believed them. He's testified that he believed them.
24 His actions suggest that he believed them. Because there's no
25 reason for him to prescribe the medication if he didn't believe

1 them. He had nothing to gain. That is this case. You act in
2 good faith if you honestly believe somebody's telling you the
3 truth and that belief turns out to be wrong. That's what
4 happened to Dr. Charles Szyman. In every one of these instances
5 that's what happened to Dr. Charles Szyman.

6 The government could not bring you a patient, the
7 government could not bring you an undercover agent that actively
8 went in there, that actually went in there and told Dr. Charles
9 Szyman the truth and still got prescribed some wrong dosage that
10 wouldn't work for them. They couldn't bring you that patient.
11 After looking through all these records.

12 Do you wonder why? Why? Because Dr. Charles Szyman
13 believed his patients. And the only time there was a problem
14 was when these patients made the decision to lie about what was
15 going on. He acted in good faith and that means he can't be
16 guilty. You must find that he is innocent, not guilty of this
17 charge, because Dr. Charles Szyman believed these people and
18 they lied. The law directly addresses our case and our
19 situation. The government didn't in argument, but the law does.

20 Now, good faith in this context means good intentions
21 and the honest exercise of professional judgment as to patients'
22 medical needs.

23 Ladies and gentlemen, we've already said, where's the
24 evidence of bad intention? There isn't any. In every case
25 we've heard from patient upon patient, [Indiscernible] people

1 that did lie to him, all of them said he was trying to help.

2 That's a good intention when the patients years later
3 all say he was trying to help. I did what I did, but he was
4 trying to help.

5 Undercover agents coming in without insurance, there's
6 no reason for him to prescribe them a medication other than he's
7 trying to help people that are telling him they've got a
8 problem.

9 And maybe his threshold's too low for trusting them,
10 but there's no other reason for him to prescribe that medicine.
11 Dr. Szyman was prescribing medication based on his philosophy,
12 philosophy that he explained to you and that he obviously
13 honestly believes. The government can't prove with any evidence
14 he doesn't believe in it. There's no such evidence here.
15 Everything we have suggested he does.

16 And so that means when he has an intellectual and
17 moral belief that he can explain to you in detail and they
18 cannot disprove and they cannot even begin to challenge, then
19 he's honestly exercising his professional judgment and that's
20 acting in good faith.

21 Good faith connotes an observance of conduct in
22 accordance with what the physician should reasonably believe to
23 be proper medical practice. And just like we just said, he has
24 this philosophy he believes in for good reasons. That means he
25 reasonably believes that he's acting with proper medical

1 practice. It's plain.

2 He talks about his policy of giving patients the
3 benefit of the doubt. And it doesn't come out of thin air.

4 He talks about how he has always believed that there's
5 something special about the doctor/patient relationship and the
6 degree of trust that you need to have. It's a loyalty, a duty
7 of loyalty to that patient that he tried to uphold.

8 And maybe he was wrong. He was wrong. He was mislead
9 in a lot of instances. But he reasonably believed this was a
10 good policy.

11 And if you think about it, it is a good policy. We
12 hope doctors will do that, don't we? Believe that there's a
13 duty of loyalty that's important between them and the patient?
14 Certainly we would hope so. And if we do, then we know he
15 reasonably believed his conduct was proper, he acted in good
16 faith, this case is done, he's not guilty of any of it.

17 And he does not have to prove that he acted in good
18 faith. He doesn't have to prove that. It's a defense because
19 it is inconsistent with the requirement that he acted knowingly
20 and intentionally.

21 The government must prove Dr. Szyman's mental state
22 beyond a reasonable doubt. Meaning they have to prove that he
23 knowingly and intentionally prescribed medication for some
24 nonmedical purpose that apparently they can't identify.

25 And deciding whether they proved that Szyman acted

1 knowingly and intentionally or instead in good faith, you should
2 consider all of the evidence that may bear on his state of mind.
3 And that includes:

4 The way the patients described his practice;
5 Listening to -- all of them saying he listened;
6 He was compassionate;
7 He took what I said and he followed what I said;
8 He responded to what I said.

9 All of that together says he's acting in good faith.
10 And the facts about Dr. Szyman that we know support this.

11 I've already mentioned that he's board certified.
12 Most doctors don't have that. That means he was willing to go
13 through extraordinary study to become an expert and recognized
14 an expert by all these people in his field. It's extraordinary.

15 He was the chief of staff of a hospital. He was the
16 chair of the anesthesiology department for years.

17 He was a founder of the sleep clinic. He was the
18 founder of the pain clinic. He did all of this. He had an
19 extraordinarily compelling career. Impressive.

20 That is not consistent with what they're saying.
21 Someone would knowingly provide medication to patients that for
22 some purpose other than medical? The person who's become board
23 certified, the person who's made this career, gotten to be the
24 chief of staff at a hospital, that person isn't going to do
25 that. The person that does that is somebody out there trying to

1 make cash, somebody that's not reputable. Dr. Szyman was
2 demonstrably reputable. And that means they can't prove this
3 beyond a reasonable doubt because he simply didn't do it. He
4 did not intend anybody to have medicine for some nonmedical
5 purpose.

6 The other part of this. The government cannot prove
7 that he ever provided medication to somebody without the medical
8 purpose or some other purpose. They can't. It's impossible.
9 It's crazy in this case.

10 But the other part of it is the usual course of
11 medical practice. They have to prove both. They have to prove
12 that he knew that he was acting outside the usual course of
13 medical practice; that he knew he was wrong and still kept
14 acting in this way and intended to. That's ridiculous.

15 You could say there's a difference of opinion.
16 Dr. King can say, hey, he doesn't agree with me. There are a
17 lot of other people that do agree with me. Fine. But that
18 doesn't mean that he believed and he knew he was acting in some
19 way outside of medical practice. Why would he do that? What
20 would be the point? There isn't one.

21 It doesn't make any sense when we look at what the law
22 actually requires for a criminal case. This is not about the
23 difference between what Dr. King thinks or what Mr. Jacobs
24 thinks and what Dr. Szyman thinks. It's not about that. It's
25 about whether he knew he was wrong, outside medical practice,

1 and was doing it anyway.

2 And why would he? He's talked about how hard he
3 worked with these patients. The patients talked about how hard
4 he worked with them, working with them for hours and meeting
5 with them, telling them when they needed more medicine. And
6 they had to meet them at the hospital. All of these things.
7 Why? If he believed he was wrong and not acting for a medical
8 purpose, why work so hard? It doesn't make any sense.

9 Dr. King admitted that there's two philosophies on
10 high-dose opiates, his and another school of thought. He
11 admitted. He didn't like it, but he admitted it was true.
12 Doctors prescribing high-dose opiates, he admitted that was a
13 trend that only started to go down in the last year.

14 So there's all kinds of people out there, a whole
15 school of thought. Dr. King admitted that there are lectures
16 out there that are lecturing people in symposiums where there's
17 hundreds of doctors sitting listening to this philosophy and
18 belief. This is a real thing. It's not some rogue
19 [Indiscernible], this is a real big thing that existed and does
20 exist in a disagreement between different people in the medical
21 community.

22 Dr. Szyman identified that and he explained why he
23 believed in the high-dose opiate philosophy after being able to
24 talk to Dr. Passik, one of the leading experts in this field,
25 and reading the literature.

1 Dr. Forest Tennant, another one of the leading experts
2 in this field, he said the idea is there is not an upper
3 boundary. You prescribe enough medication to reach
4 functionality or until the patient reports side effects that
5 can't be managed.

6 That makes sense. That's not crazy. And he said that
7 it made sense to him. And he explained why it made sense to
8 him.

9 And so, ladies and gentlemen, he's gone through all
10 that. And he can articulate specific reasons why he adopted
11 this philosophy which was believed by a whole bunch of other
12 people in the same community. And no one could possibly say we
13 proved beyond a reasonable doubt he thought he was outside of
14 medical practice, he believed and intended to act outside of
15 medical practice. He didn't. He thought this was legitimate.

16 And there's more than one good reason for him to think
17 that. Yes, there's a school of thought. Yes, there were
18 experts that he talked to in person. He believed it was proper.

19 But Dr. King maybe made the most important admission
20 at the end of his cross-examination testimony. Dr. King said
21 that a doctor could act in good faith, believe in the high-dose
22 opiate philosophy espoused by these experts, and could act in
23 good faith even if he was wrong. Dr. King said he could act in
24 good faith even if he was wrong.

25 If you act in good faith -- what Dr. King didn't know

1 is this was a part of the case under the law. But if you could
2 act in good faith using this methodology the law says you're not
3 guilty of the crime. Dr. King admitted what the law requires,
4 that Dr. Szyman be found not guilty. Because the law is what it
5 is and you are required to follow it.

6 Dr. King talked a whole lot about the standard of
7 care. He and I had an endless fight about the standard of care.
8 And he had rendered his opinion as the only one, whether anyone
9 could ever disagree with him and he clearly thinks most people
10 don't.

11 But what you're gonna find out when you're instructed
12 by Judge Griesbach is that some of you may have heard the
13 medical malpractice -- heard of medical malpractice or the
14 standard of care, language Dr. King kept using. This is not a
15 medical malpractice case. Those are terms used in civil cases
16 when a patient is seeking damages. Medical malpractice is the
17 unwarranted departure from generally accepted standard of
18 medical practice allegedly resulting in injury to a patient.

19 This, however, is a criminal case. So all this
20 standard of care stuff Dr. King was talking about, that's not
21 what our case is about. And what Dr. King accidentally admitted
22 when he said you can act in good faith and believe in high-dose
23 opiates, was that Dr. Szyman isn't guilty of this crime. Maybe
24 if somebody sues him Dr. King can come and testify then, but his
25 testimony is not that helpful to us here.

1 Now, Dr. Szyman basically said that in his view and
2 why he accepted this philosophy was because it is a fact that
3 some people tolerate opiates better than others. Some people
4 can tolerate a lot more. Some people can tolerate a small
5 amount, some people can tolerate a very large amount. And
6 Dr. King said you can't go higher than 100 MEQ. Dr. Szyman
7 said, well, that's a box. That puts a ceiling on it and people
8 get left out.

9 And we've seen evidence of that in this case. You've
10 seen it with your own eyes. As you -- cause you saw Dabien
11 Peterson when he's not taking high-dose opiates. Now, I -- I
12 don't think there's any doubt Dabien Peterson has a serious pain
13 problem. The man can barely move. That's what he's like
14 without high-dose opiates.

15 And if we follow Dr. King's philosophy then
16 Mr. Peterson never gets to functionality. He would deny
17 Mr. Peterson all of those years that Mr. Peterson says he could
18 move around, he could get out of his house.

19 And I don't know, Mr. Jacobs suggested I guess that
20 Mr. Peterson is lying, that his condition didn't improve? That
21 he wasn't able to do all of these? Why? Mr. Peterson can get
22 nothing from Dr. Szyman now. He has no -- this is years past.
23 Totally gone.

24 The only reason for him to want to come down -- and do
25 you know how hard it was for him to come down here? You saw. I

1 mean it took three marshals just to help him get up on the stand
2 and out the door. And [Indiscernible] all the way down. It
3 took the man an hour, he said, to get out of here, just to get
4 to his car right outside in the front. You think, why would he
5 do that? Why would he go through all of that? Other than if
6 what he said was true, that Dr. Charles Szyman saved his life
7 and gave him his life back for a period of time. If someone has
8 done that for you, yes, you will go to the courthouse and you'll
9 take an hour to get in there. You will.

10 But if somebody just gave you drugs when you wanted
11 drugs, no, you wouldn't do it for that. There's no evidence --
12 the government can't prove Dabien Peterson is lying when he said
13 the dysfunction improved. And his example shows us that
14 Dr. King's philosophy leaves people out.

15 Not only that, Mr. Peterson's example validate
16 Dr. Szyman's philosophy. But so do all these patient witnesses.
17 Look, the other patient witnesses had all said at different
18 times that they were abusing the medicine. Most of them did
19 anyway. They abused it. They took too much and they lied and
20 they sold and they did all these things.

21 But what they also said is there was a point for each
22 of them in their treatment where the dose of medication that
23 they got made them better. Improved their pain. And every one
24 of them was on more than 100 MEQ. So that means that every one
25 of these examples is a person that Dr. King's philosophy would

1 have left out. And that's evidence that Dr. Szyman had reason,
2 reason from his own practice, reason from what he was seeing
3 from these patients to believe that, yes, this philosophy is
4 good; yes, we should be following this philosophy cause I'm not
5 willing to leave Mr. Peterson out. I'm not gonna leave him to
6 suffer in pain if I can do something.

7 Believing that is not, not a situation where the
8 government can prove that he knew he was acting outside of
9 medical norms and was doing it anyway. No. Believing that is
10 believing in a philosophy and trying to act in good faith to
11 help people like Dabien Peterson who says he helped him. They
12 all said that he helped them.

13 Now, various ones abused it. Various ones ended up
14 having problems with withdrawal at different points. That's a
15 risk that goes along with this. But all of them said that he
16 helped them.

17 So this philosophy isn't crazy. Going over 100 MEQ
18 doesn't -- doesn't -- everybody doesn't drop dead. Everybody
19 doesn't have these terrible side effects so they can't function.
20 All these people said that there's -- they did. That validates
21 Dr. Szyman's philosophy.

22 And it wasn't just from the patients. He told you --
23 the government can't disprove this. They can't say it's not
24 true. It is true. Dr. Szyman was reviewed by Medistar, which
25 is a Medicaid program, to determine whether they should be

1 paying for his high-dose treatments. He was. He told you that.
2 Six doctors validated high-dose opioid therapy by Dr. Szyman and
3 that [Indiscernible] to Dr. Szyman, that told Dr. Szyman that,
4 yes, my philosophy is valid.

5 Other doctors are saying this is what -- this is
6 within the standard of care that Dr. King was talking about.
7 This is within the medical practice norms. I've got proof of
8 it. I'm doing good.

9 When that's the case and they can't deny, then how can
10 they say we proved beyond a reasonable doubt he knew and
11 intended and thought he was acting outside of medical practice?
12 They can't.

13 What do they do about this? What about these six
14 doctors that impacted Dr. Szyman's thinking? Are they all
15 criminals too? All the people that believed in this philosophy,
16 Dr. Passik and all the people that went to those seminars,
17 Dr. Tennant, are they all criminals too? All the patients that
18 they treat using more than a hundred MEQ? No. They're just
19 people that disagree with Dr. King, the government's doctor, the
20 government's expert.

21 That's the reality. His philosophy is accepted. He
22 had evidence of that, objective evidence from other doctors. So
23 they can't prove that he was knowingly acting outside the usual
24 course of medical practice. They just can't. The law is what
25 it is. They cannot prove it.

1 And the difficulty here is, it's so easy to get caught
2 up in thinking, well, they sure are big numbers and people did
3 get withdrawal and there are these big risks and somebody died.
4 Yeah. All of that is difficult. And maybe all of that could be
5 addressed by any one of these patients who decides to have it
6 addressed and evaluated at a civil lawsuit for medical
7 malpractice to see, to see whether the doctors that agree with
8 Dr. Szyman would prevail or the doctors that agreed with
9 Dr. King.

10 Maybe that's [Indiscernible], but it's not this,
11 folks. And the government, they push this issue like, well, he
12 should have done more, he could have done this and he -- you
13 know, these numbers are so big and they call him a drug dealer
14 and all this nonsense. And they make it so easy to lose what
15 the law demands — proof beyond a reasonable doubt that he knew
16 he was outside the norm; beyond a reasonable doubt that he knew
17 this was for some purpose other than medicine when they can't
18 identify the purpose?

19 They can't prove that. This isn't a criminal case.
20 [Indiscernible]. He's not guilty. The law says it and the law
21 decides how you have to judge it. You have to judge the
22 evidence based on that law.

23 And whatever he does when he gets back up to give his
24 rebuttal argument, Mr. Jacobs isn't going to be able to change
25 what those legal instructions say. He isn't going to be able to

1 change that he has to prove beyond a reasonable doubt that he
2 knew he was outside the course of medical practice and that he
3 knew he was giving medicine for some purpose other than
4 medical -- when he can't tell us what that purpose was. He
5 can't change that. He can't change that. And he can't change
6 what the law demands -- the acquittal, the finding of not guilty
7 for Dr. Charles Szyman.

8 Let's talk about these undercover agents for a minute
9 because that's -- the gory part of the government's argument is
10 about these folks. And basically what they're saying is, well,
11 he should have asked them more questions. He didn't -- he
12 didn't pay enough attention. He didn't confirm their pain.
13 They gave him explanations of this intermittent pain problem and
14 they gave some relatively detailed claims to the nurses and all
15 of this.

16 But the government's argument really boils down to he
17 made a mistake not being more skeptical. He made a mistake not
18 asking more questions. He should have done more. But the law
19 Judge Griesbach read to you addresses this problem too.

20 "A person acts knowingly and intentionally if he
21 realizes what he's been doing and is aware of the nature of his
22 conduct and does not act through ignorance, mistake or
23 accident."

24 So the argument really boils down to he was mistaken
25 in not asking more questions, he was mistaken in trusting these

1 people and listening to their recommendations on what they said
2 would work for them. He was mistaken. The law says in a
3 criminal case mistaken? You're not acting knowingly. He's not
4 guilty for that. That's the law talking. Not Mr. Jacobs, not
5 Dr. Szyman, that's what the law says.

6 Now, what are the government's criticisms of
7 Dr. Szyman in general? Well, the government criticizes
8 Dr. Szyman for prescribing medications above 100 milligram
9 equivalency units according to Dr. King's opinion.

10 But, ladies and gentlemen, there's nothing about
11 that -- he's given a philosophy that explains why he did that.
12 He's given the explanation for how it impacted in the health of
13 these patients. These patients have testified how doses above
14 100 MEQ did make them better. Some of them testifying it made
15 them better than others, but all of them testifying it made them
16 better at some point.

17 So doing that, ladies and gentlemen, the fact that he
18 did that, that does not prove that he knew that he was giving
19 patients medicine for something other than a medical purpose.
20 It doesn't even scratch the surface of that. And it doesn't
21 prove that he was acting in bad faith.

22 Everything says he was trying his best to act in good
23 faith. Allegations about patients. He gets these he said/she
24 said situations where a police officer would call and say an
25 informant told me this, or I've got a gut feeling about this

1 person, or somebody's mom would call and say I think the drugs
2 are eating him up or whatever it was that she said about
3 Mr. Wenzel.

4 And Dr. Szyman, he met with the patients. He talked
5 to them about the -- he didn't ignore them. All the patients
6 said when one of these issues came up they sat down, they had a
7 discourse. And Dr. Szyman said it was my philosophy to trust
8 and believe the patients unless I had some proof beyond a
9 he-said/she-said.

10 And what's wrong with that? They were his patients.
11 He had a duty of loyalty to them. These alternative people, he
12 didn't know who they were. He couldn't verify what they were
13 saying if the patient gave an alternative explanation.

14 Does that mean that he was intending to give people
15 medicine, that he knew they had some purpose other than medical?
16 No, it does not. Does that tell us anything about whether he's
17 acting in bad faith, bad faith having bad intentions for his
18 patients? No, he did not. This does nothing for the
19 government. This is [Indiscernible] medical malpractice
20 information. Is this a better practice or is some other
21 practice is better? Let's have a competition of experts. No.
22 Do that in a civil court, this is a criminal case.

23 They say, well, he didn't do enough physical exams or
24 MRIs. But the truth of the matter is the patients came with
25 these records from their referral doctors. The patients all

1 said that.

2 You know, [Indiscernible] we went over them with
3 Dr. Szyman. He looked at them. He talked to us about them.
4 All of this was done. Dr. King didn't get the records from any
5 of the other doctors so the government didn't give them to him.
6 Fine. But that doesn't mean they didn't exist and they didn't
7 inform Dr. Szyman.

8 Does this prove he's trying to give people medicine
9 that -- for some purpose other than medical? No. Does it prove
10 that he had bad faith and that he had bad intentions for his
11 patients? No, it does not. It doesn't even come close to that.
12 The things that they're talking about don't even come close to
13 what the law demands that they prove.

14 Risky side effects. Yes, opiates have risky side
15 effects. Some of these combinations [Indiscernible] the
16 prescriptive speedball that Dr. King was talking about. Yes,
17 there's risks to using it. There are. There are increased
18 risks of overdose. Yes, there is. Dr. Szyman knew the risks.
19 He talked to the patients about the risks.

20 But here's what the government's leaving out of all of
21 this. He talked to them about the risks and those risks
22 existed, but so existed the patients' state of debilitation and
23 pain. That existed too. And those patients had every right to
24 make a decision to say I want to take these risks and have a
25 chance to live a better life without this pain that gives me no

1 life at all. They had a choice. Dr. Szyman gave them a choice,
2 a choice that patients ought to have who have to suffer like
3 that. He gave them a choice.

4 And so risky side effects, does that mean he was
5 giving them medicine that he knew there was no medical purpose
6 for? No. He was giving them medicine that he knew how to risk
7 and that he told them how to risk; that the medical purpose was
8 to get a man like Mr. Peterson up out of his chair. And that's
9 worth something. It's worth something to Mr. Peterson. It's
10 worth the risk to him.

11 What the government forgets in all of their argument
12 is they forget what these people were like when they came to
13 Dr. Szyman. They remember all about the addiction. They
14 remember all about the problems when somebody would take too
15 much or they'd become too tired. They remember all the problems
16 but then don't remember what every one of them admitted at the
17 beginning, their quality of life was crippled. And he gave them
18 a choice to try to not have that crippled anymore.

19 But does that mean he's acting in bad faith? No. It
20 means he's doing the opposite. He's doing the best he can in a
21 terrible situation with patients nobody else could help and
22 nobody else wanted. Dr. Szyman wasn't gonna throw away Dabien
23 Peterson. Do whatever he could that Mr. Peterson agreed he
24 wanted to try. That doesn't mean he's trying to give people
25 medicine without a medical purpose. He's trying to give

1 medicine with a medical purpose, specifically to get them out of
2 that state when nobody else could and everything else failed.

3 The risks can be acceptable to the patients. And
4 that's a fact. And they were and they tried. He tried. It's
5 the best he could do.

6 He also knew that these combinations of drugs, the
7 government focuses on a few instances of, well, what do you
8 think it takes for a pharmacist to call and say there's a
9 problem? Yeah, sometimes pharmacists called and said there's a
10 problem. But that's a handful of times.

11 These people are getting the medications routinely,
12 these dosages and these combinations. Pharmacists are filling.
13 Pharmacists who Dr. King admitted they've got a duty. If this
14 thing is inherently terribly dangerous, is not -- and you can't
15 have it, it's outside of medical norms, they can't fill it. And
16 they did over and over and over again, validating Dr. Szyman's
17 view that, yes, there is a legitimate medical purpose.

18 And this is not outlawed as improper. Insurance
19 companies paid for this. You can see it in the records. They
20 paid over and over again. BadgerCare, Wisconsin, they paid.
21 Insurance companies don't pay for outlandish treatments. If you
22 want any treatments that is outside the scope of what is within
23 medical norms, you've gotta get down on your knees, crawl and
24 beg to get the insurance companies to pay for that.

25 Anybody that's got or had a serious medical problem

1 knows that. But they paid on this. What does that tell
2 Dr. Szyman? It tells him that this is within medical norms.

3 Look at all these referral doctors that knew him, that
4 send patients to him, the patients that have the most problems,
5 the patients that have the most difficulty. They can't help
6 them. Why did they pick Dr. Szyman? Do you think they picked
7 him because they thought he was a rogue [Indiscernible] who had
8 some other than medical purpose and was gonna push that on their
9 patients? Do you think he'd be getting all those referrals
10 from --

11 These people aren't coming in off the street. This
12 isn't a walk-in clinic. It's not a drug dealers' corner where
13 anybody can walk up there. Doctors sent all these people. Why
14 would he do that if he was some sort of a nut who was
15 intentionally giving people medicine for something other than a
16 medical purpose? Are all these other doctors criminals too?
17 Are they going to be next? It's absurd.

18 If he was acting well outside the scope of medical
19 purpose -- practice and if he was intentionally and knowingly
20 giving people medicine for some purpose other than medical,
21 there is no way that over for years and years where this is
22 going on referrals would keep coming in from these doctors who
23 know him. From all over the place. Because these doctors could
24 be risking their own reputation. They would be risking their
25 own future. Why would they do that? They wouldn't do it. They

1 sent them to him because they knew that he was a doctor who
2 would try to help and wouldn't throw people away. No matter how
3 bad it was, he'd look for an answer. That's why they sent him
4 the worst patients.

5 When you're talking about doctors at pain clinics,
6 other pain clinics failed and then they referred them to
7 Dr. Szyman. Why? Because he was willing to try something else.
8 And that doesn't mean he's acting in bad faith. That means he's
9 acting in good faith, otherwise that would have never happened.

10 There's a risk of abuse. Of course there is. But
11 they tried to modify that. They tried to mitigate that I should
12 say. They used the opioid agreements. They used drug screens.
13 They used pill counts. They used observed medication
14 consumption when there was a big question.

15 If you're giving the medicine for no legitimate
16 medical purpose and you're intentionally doing it and knowingly
17 doing it, why would you bother with all this? Why? No
18 legitimate medical purpose, forget it. Just keep giving it out.
19 Who cares? It's a candy machine, it's a drugstore, right?
20 Right? Just come on in.

21 Well, why do we fool around with all this? Why do we
22 have situations where these folks get dismissed from the clinic?
23 Why? It doesn't work. The government's criticism doesn't
24 really make sense when you dig into it because there would be no
25 reason to do these.

1 If he knows he's acting outside of medical norms, he's
2 doing it on purpose, he's -- he has bad intention and bad faith,
3 he's not gonna bother with this. There is no ethical
4 requirements that say you have to do drug screens and pill
5 counts. Dr. King admitted there's no requirements of any kind
6 they're demanding on doctors on this. He has to choose to do
7 these things. And if he's doing it for some other purpose than
8 medical and he knows he is, he'd never make that choice.

9 This doesn't help the government.

10 And then the increasing pain score. Mr. Peterson
11 actually did a decent job yesterday of explaining why this is
12 just flat stupid because you're saying, oh, well, there were
13 times when the pain went up while being treated by Dr. Szyman.
14 Well, pain is -- I don't understand what's wrong with the
15 government, pain is not static, it is dynamic. It doesn't stay
16 the same every single day. One day it might be a 5, but
17 Mr. Peterson said sometimes in the winter when it was cold when
18 there was snow it would go up. Or because I was on the
19 medication and I was able to be more active I might have more
20 pain on some days but I was doing more. My life was better so
21 it mattered to me, I was still doing better.

22 Okay. So the fact that on one day a pain score
23 increases, that doesn't prove that Dr. Szyman knew that he was
24 giving them medicine for no medical purpose because he was there
25 looking at them, he was there evaluating him, he was there

1 listening to their feedback. So all of this, it's nonsense.

2 The pain score.

3 And the government seemed to want to have it both --
4 that's how you know that their argument isn't very good. That's
5 how you know that their evidence isn't very good, because they
6 want to have it both ways. They want to say on the one hand,
7 well, the pain score goes up so Dr. Szyman, he's guilty, he was
8 wrong, he must have known there was a problem, pain score goes
9 up.

10 Or, when -- when the -- the undercovers come in and
11 they say, well, we have intermittent pain so today the score is
12 zero. Well, they said it's a zero, the pain score is at a zero,
13 so it's a problem. They want to have it both ways.

14 You can't have it both ways. And the problem in both
15 instances is the failure to understand the common-sense
16 principle that pain is different on different days.

17 Intermittent pain that comes and goes is a zero on the
18 days when it's not there and it's a 5 on the days that it's bad.
19 It's not that hard to understand. But they want to make a big
20 deal out of it. If they want to make a big deal out of that it
21 means they don't have any real evidence that he actually had a
22 bad intention. Because they wouldn't be messing around with
23 these pain scores like this if they did. It just doesn't
24 indicate and cannot indicate that he was knowingly prescribing
25 medicine for some purpose other than medical.

1 The abnormalities. He tolerated certain abnormalities
2 and didn't take the people off the medicine. Okay? But what
3 did we learn from that? The patients all said when I had a
4 problem or a problem with a drug screen, pill count, whatever,
5 he would come and address it with me. I had to talk to him.

6 Well, if he knows that they're getting the medicine
7 for no medical purpose, why bother messing with them? Why go
8 through all this nonsense? Why bring them in and have these
9 conversations? What's the point? Doesn't have to. Why do it?
10 You only do it if you're trying to help them. You only do it if
11 you believe the medicine is for a legitimate medical purpose and
12 you're trying to make sure that the treatment can continue
13 effectively.

14 Dr. Szyman's problem and the government's problem with
15 Dr. Szyman is that he didn't want to kick people out. He didn't
16 want to throw them away. He wanted to find a way to make it
17 work. And what is so wrong with that? It's mystifying to me.
18 He believes them and works with them and if they lie, okay, he
19 might be wrong in a handful of instances.

20 Where are all the patients he was right for? The
21 patients that he believed and out of 350 to 400 whose lives he
22 made -- what about all those folks? No, it doesn't mean he knew
23 and knowingly was giving people medicine for a nonmedical
24 purpose. It doesn't mean anything like that. It doesn't say
25 anything about that. It isn't helpful to that -- with that

1 issue. It doesn't get the government anywhere.

2 Linda Kramer talked about this. She said, well,
3 Dr. Szyman had a way, he could be stern but he could still be
4 nice with these people. That's when they would have these
5 problems and he would go to them. He was trying. And if he was
6 trying he's not acting in bad faith. That means he's not guilty
7 under the law.

8 He said that people come in with mental health issues.
9 They had addiction histories, they have criminal histories. She
10 sold marijuana. She had a record from the courts. Do we throw
11 them away then?

12 See, that's the problem with this whole theory. You
13 don't want to give them the high-dose opiates. These people
14 don't -- they admit, they were crippled in terms of their
15 quality of life. So what are you going to do? You say you have
16 a criminal history and mental health problems, you're not gonna
17 get the one form of treatment that nobody's tried that might
18 work? I'm not going to give it to you, I'm sorry. So if you've
19 got a few coming from jail, too bad, I'm throwing you away.

20 Charles Szyman didn't throw anybody away. And that's
21 a benefit to who he is and the kind of person he is. These
22 people had a right to be treated. They had a right to try a new
23 form of treatment, the only one that might work because
24 everything else failed. They had a right. And he was a doctor
25 that would help them actualize that and try to work with them,

1 even though they had problems in their background. Because if
2 he didn't, what's the alternative? They suffer and are
3 miserable every day. What's the alternative?

4 Well, there is bad possibilities [Indiscernible] yeah,
5 there's bad possibilities that could happen. But what's the
6 alternative? You just forget about these people. The
7 government and Dr. King would sweep these people under the rug
8 and throw them away. Dr. King would put them through a litany
9 of treatments they've already tried and that already failed and
10 let them suffer and have no chance.

11 Well, I don't like that. Dr. King is wrong. These
12 people deserve to be treated too and there's nothing wrong with
13 the fact that he was willing to do it. That's why the referral
14 doctors would go to him because they knew he would try. That
15 means he's acting in good faith. That means he doesn't have bad
16 intentions and he's not giving people medicine knowing that
17 there's some purpose other than medical.

18 Ladies and gentlemen, that's the big picture. That's
19 what the [Indiscernible] demands. He's not guilty, period. He
20 can't be. They can't possibly prove it.

21 If you follow what the law actually says, and you're
22 demanded to, and don't get caught up in, well, it sounds like a
23 lot to me and I don't like opiates and I don't like these
24 results, I don't like them selling on the street. Nobody does.
25 But the law says he had to know that it was for a bad purpose.

1 He didn't know. He had to act with bad intent, he didn't do
2 that. He's not that kind of a person. He doesn't have that
3 kind of a history.

4 It's the end of the case. This case closed. But we
5 need to look at, as Mr. Jacobs did, at the actual charged counts
6 and see how these principles apply, these big-picture principles
7 apply here.

8 And let's begin with Russo. Because is there evidence
9 of what the nonmedical purpose was with Russo? I've said this
10 before. But if they want to really get a doctor and say, well,
11 he'll give you medicine for a nonmedical purpose, well, go in
12 there and tell him you haven't got one and see what happens.

13 Russo knew well that if he went in there -- and he
14 admitted, well, I had to go in there and tell him something, I
15 had a pain problem, or I wouldn't get anything. Do you know
16 what that means? He wouldn't knowingly give it to you without a
17 medical purpose. Period. He's not guilty. Russo basically
18 admitted it.

19 This entire episode with Russo was a lie and the
20 government says, well, I don't know why they say it was a lie,
21 he said his pain was zero. No, no, I'm not talking about his
22 pain score. I'm looking at something more than just a pain
23 score.

24 They seem a little bit obsessed with the number. I'm
25 looking at what they did overall with this thing. This was an

1 insidious and despicable way to treat this doctor. What do they
2 do? The guy goes in there and he's engineering [Indiscernible]
3 to manipulate him from the beginning. Well, I don't have any
4 money. I have no medical insurance. Okay. So there's a
5 limitation of what treatment he could possibly get because he's
6 got no medical insurance.

7 And they know by this time from the investigation in
8 talking to these patients Dr. Szyman tries to help low-income
9 people. We've heard that from the witnesses. So they're gonna
10 take advantage of that because they know there's going to be a
11 limit on what he'll try to do because he knows there's a limit
12 on their insurance.

13 They take advantage of his compassion. The government
14 does this. And then the guy comes in and tells them a lie, I
15 went to a pain clinic before. Well, if you were going to get
16 him because he gives out medicine like a candy machine -- right?
17 -- then why would you go through this whole deal with the pain
18 clinic before? That seems unnecessary. If he's just going to
19 give them out for no medical purpose, [Indiscernible] -- he said
20 they were going to have a test. Why didn't we have a real test?
21 No, because a real test would be if they had told him, hey, I
22 really don't have a medical -- I don't have a pain problem, I
23 want to get some pills, they would have kicked his ass out.
24 That's the reality.

25 And so they gotta make up a lie. They gotta make up a

1 lie. And so whether they -- what's the lie? Well, first of
2 all, you've been to a pain clinic before and you got Percocets.
3 And he tells the nurse. And you can listen to his -- the dialog
4 with the nurse. The part that the government left out, I think
5 everybody probably remembers that little episode. Defense
6 Exhibit 1002. You can listen to this. It's at the beginning.

7 And he tells the nurse -- and he admitted this
8 eventually -- "Percocets work fantastic." So he leads him to
9 believe he's been to a clinic, he leads him to believe he's had
10 this medication and it works for him, and then he tells the
11 nurse that he gets limited motion from his pain.

12 So the whole thing is, well, it doesn't -- they go all
13 on this medical chart that's filled out and says, oh, well,
14 these medical charts are perfect, all we can look at is them.
15 And it says he doesn't improve his [Indiscernible] his
16 functionality, doesn't do this, he doesn't do that.

17 Listen to the recording that he admitted says it
18 affects my -- it limits my motion. So I don't care what the
19 medical records say, we know what he said in person. And he
20 said this was the problem that limited him. All right.

21 So this idea that it was no big deal, that's not what
22 he told the nurse. It's just not. He lied and made this up so
23 there was a whole thing. And then there was this part and this
24 part is the most insidious. They give him this, oh, you can
25 call the clinic and verify. Well, that seems like a legitimate

1 thing to do. A doctor's gonna try to follow up. And then
2 [Indiscernible] clinic informed he's a patient but he doesn't
3 have -- but they can't get his records.

4 Why would you go [Indiscernible] at this? You are --
5 you are requiring so much. The doctor is trying to follow up.
6 You know what it is when you call up and say, hey, we need to
7 verify this guy's -- [Indiscernible] a patient. Do you know
8 what that is? That's acting in good faith. That's not guilty,
9 folks. That's not guilty. Why else do you call? They tried to
10 do the right thing and these people created this lying ruse to
11 screw it up. And then so they can say, gotcha, buddy. We
12 gotcha.

13 We have a fake doctor's office? Give me a break. You
14 don't need to make up a fake doctor's office for a doctor who is
15 really prescribing without a medical purpose. You don't need no
16 fake doctor's office. You'd go in there, you ask him for the
17 pills, you get the pills, you don't have to screw around with
18 that. If you're going to have to go to great lengths to say,
19 well, we're going to have to have a fake doctor's office in
20 place to take the call, then you know very well that he would
21 never knowingly give it to you without medical purpose. Their
22 whole scheme proved that.

23 The office, they did all they could to verify him.
24 They led [Indiscernible] him -- this leads Dr. Szyman to believe
25 this guy's legit and it causes him not to really challenge it

1 very much and they give a lot of credence to what he says.

2 Maybe he puts too much respect in the fact that there
3 was another clinic. Maybe. But they led him to believe that.
4 And him putting too much respect in that and maybe that being a
5 mistake, that's not enough here. That doesn't prove that he
6 wasn't acting in good faith. If they want to find out and prove
7 that he was acting in bad faith they needed to do something
8 different.

9 He believed he had Percocet before. The guy asked for
10 the lowest dosage of Percocet. He didn't come in there and ask
11 for some giant dose that was crazy. "I want 80s." No, he
12 didn't do that, hand him Morphine 80s or something
13 extraordinary. He didn't do that.

14 So we didn't get to see that one. If they would have
15 come in and asked for something that's truly out of the
16 ordinary, see if he can get that. He didn't do that because he
17 wouldn't knowingly give it to them and they knew it. They knew
18 it. This whole thing, they knew it. They knew from the
19 beginning he would never give anybody anything without believing
20 there was a legitimate problem. They knew he was going to act
21 in good faith and they tried to twist around and weasel him into
22 making a mistake. Well, you don't have to do that if
23 somebody's -- you can prove beyond a reasonable doubt that
24 somebody's giving people medicine without a legitimate purpose.

25 They should have -- well, he -- they should have

1 expected he's drug-seeking because he comes in and asks for
2 these drugs. Look, this thing about the pain score of zero,
3 nobody that says they've got a zero is a drug seeker. Drug
4 seekers are trying to get drugs. If you go into the pain clinic
5 and you say, Doctor, I [Indiscernible] I need to get drugs and
6 I'm a fake. You're gonna say, oh, my God, my elbow, I got
7 debilitating elbow, you gotta help me. My pain's an 8. My
8 pain's a 9. [Indiscernible].

9 If you're gonna try and get the drugs [Indiscernible]
10 in a big lump, you gotta feign something. They didn't do that.
11 And so by not doing that they lead him to believe this isn't a
12 drug-seeking risk. They got the pain clinic. They got the zero
13 score. He's not put in the mindset of thinking this is a risk.

14 So they trap him. And they know they had to do it and
15 they do it. And then Mr. Jacobs said, well, if he had said a
16 higher score then he would just be treating him properly. Sure,
17 that's fine. He would be. But they didn't want to give him the
18 chance to try to treat somebody properly, they wanted to create
19 some fraud so they could get him to make a mistake and trust
20 somebody improperly. And that's what they did by using this
21 zero score and this intermittent pain that this man was
22 describing, that he said I know it's going to come back, I've
23 had it before for years, it's intermittent chronic pain.

24 Now, with respect to the Percocets. He comes back the
25 second time after Dr. Szyman now has in his background that, oh,

1 there was another clinic and I -- that he talked to, has
2 verified that he was at the clinic. He's indicated he was on
3 Percocets. I believe in him. I don't have any reason to think
4 he's drug-seeking at this point.

5 And then he says, well, I don't know if the two
6 Percocets are doing very good. Well, you start out from the
7 perspective that you're going to trust this guy and you're the
8 doctor, what does that mean to you? I got pain and the
9 Percocets aren't treating it. What else would it mean? I don't
10 think the Percocets are doing very -- do you really think that
11 he's been [Indiscernible] and the Percocets are doing very good
12 and Dr. Szyman interpreted that, oh, they're not getting you
13 high enough? Well, let's help you out.

14 That's nonsense. If you start from trusting this guy,
15 which Dr. Szyman mistakenly did, then this statement says it's
16 not working, you need something else and he offers something
17 else, the next step, the 10s and 20s. He's not acting in bad
18 faith.

19 And that's -- they have to prove bad faith; that he
20 was intending to give them to him for some other purpose. And
21 we don't even know what that purpose would be. He wasn't
22 getting anything from Russo. It's nonsense. No. He acted in
23 good faith. They manipulated him purposely and carefully.

24 He said he was going to take it for pain. And he said
25 the only purpose for the higher dose was because it wasn't

1 working. That's what the man said. Could he have asked him
2 more questions? Sure. Should he have asked him more questions?
3 Maybe. But none of that gets us to proof beyond a reasonable
4 doubt that he was giving him medicine knowing it was not for a
5 good purpose.

6 The last other interaction here is where he says the
7 Oxy-30s, "I ran out and I tried my girlfriend's." Well, when he
8 says "I ran out," what does that tell him? He's had pain, he's
9 using the medicine. If you start from trusting him, that's what
10 you believe.

11 Now, the only way that you don't, the only way -- if
12 you start out believing Russo is lying -- and Dr. Szyman didn't
13 do that and Russo made it unlikely for him to do that with his
14 fake doctor's office. So prescribes him the 30s. He thinks
15 he's going to take them for the pain. He said that they worked
16 when he took his girlfriend's. He believed the guy. Should he
17 have done more? Maybe. But he believed the guy.

18 That doesn't mean he's acting in bad faith. It
19 doesn't mean they've proved beyond a reasonable doubt what they
20 gotta prove under the law. It's not even close. It's not bad
21 faith unless he believes he's lying and there's no evidence he
22 believed that he was lying. Why would he?

23 [Indiscernible] the doctor's office and all of the
24 rest, no.

25 There's a reasonable doubt about [Indiscernible]. The

1 offhanded comments about the oxy, oh, people like the 30s, okay.
2 What's the government's theory? That he was trying to give him
3 the medicine so he could go out and sell it? Really? A doctor
4 who for all these years, decades of -- that's what he wants and
5 he's not getting anything out of it? That's dumb. That doesn't
6 make any sense and there is no proof of it. You can't just say
7 it. You'd have to have proof of it and they don't.

8 The urine drug screen that came back clean Mr. Jacobs
9 admits, well, it was supposed to be on and off taking the
10 medicine so maybe that didn't mean anything. So there's no
11 proof of bad faith and there's certainly no proof beyond a
12 reasonable doubt of him prescribing for some nonmedical purpose.

13 Now, it may be a mistake to come out to question him
14 and it may be a mistake to trust him. Those things are true.
15 And it was, in fact. But the law says, and we went through this
16 before and we'll probably end up repeating it again, that if he
17 makes a mistake he's not acting knowingly and he can't be
18 guilty.

19 Russo's evidence that they used here in court I think
20 also sheds light on the fact that they do not have proof beyond
21 a reasonable doubt this doctor was prescribing medicine for no
22 legitimate medical purpose. Because Russo says -- on the way to
23 the stand, all this stuff in the medical, the maximum pain of 5,
24 yes -- x-rays, yes, response to [Indiscernible] -- I don't -- I
25 don't know, I never said that to anyone on the medical side. I

1 don't know where that came from.

2 And then we have to sit through until the next day and
3 hear a recording where his voice says it all. They were trying
4 to give the impression that Dr. Szyman falsified the records
5 when this guy did it all. He gave -- you don't do that in a
6 case where the evidence is legitimate and beyond a reasonable
7 doubt. 4 to 6 out of 10 over and over and over again. Where
8 did the 5 come -- it came from him. It wasn't made up. You
9 don't have to suggest those things if you have a good case.
10 That doesn't happen.

11 Dr. Szyman is not guilty of Counts 1 to 5. The law
12 demands it. There's no way around it. The scheme they created
13 won't allow it.

14 Counts 6 to 9 are all about the other undercover.
15 Ms. Kingston was the name that she went by. When she talked to
16 Dr. Szyman she gives a detailed description of her pain and then
17 she comes in with medical records from Dr. Augustine. And these
18 records from Dr. Augustine are important. Dr. Szyman reviews
19 those.

20 What did Dr. Augustine say? This is Dr. Augustine
21 talking now. That she was on Percocet 7.5 and 10 in the past,
22 was seen by a pain specialist, and she has exacerbation of
23 shoulder pain intermittently. So she has convinced
24 Dr. Augustine that this is accurate. He doesn't know any
25 suspicion.

1 So that leaves Dr. Szyman to believe, okay, she's
2 legit. Dr. Augustine sees no problem. But that's not all. You
3 gotta look a little bit closer at the Augustine records to see
4 something else. Augustine's impression: No pain today. Her
5 left handgrip is a little bit stronger than her right so she
6 probably had some deconditioning of the right shoulder.

7 That means that Dr. Augustine through his physical
8 manipulation of Ms. Kingston reports to Dr. Szyman in the record
9 that there's evidence that this is legitimate. There's a grip
10 problem. So Dr. Szyman has every reason not to distrust this
11 person coming from Dr. Augustine, connected to Mr. Russo who
12 hands the phone call that he believes is legitimate. There's no
13 proof of bad faith. And there's no proof that he's prescribing
14 this medicine for no medical purpose. It's just -- no. He's
15 not guilty of Count 6.

16 Now, Counts 7 and 8 he admits it was a mistake. And
17 you know it was because all of the witnesses said whenever
18 they -- they had to come in regularly to get these
19 prescriptions. He made a mistake. She -- he signed the
20 prescriptions and didn't realize. And he just made a mistake.
21 He admits it. And it's consistent with the evidence because
22 everybody else always had to come in. It's a mistake. On this
23 incident he didn't catch it and it was a mistake.

24 And when she comes in what he says to her, if you look
25 at the transcript, he says, well, I thought it was just going to

1 be one every other -- you know, every day or so. He confronts
2 her and says, hey, I thought this was different than it is.
3 Which suggests that, yes, it was a mistake. She has to tell him
4 how it happened.

5 And what do we know about mistake? If it's a mistake
6 he's not guilty because it's not knowing. You can't knowingly
7 give someone medicine for a bad purpose if you're doing it by
8 mistake, if you're too carelessness. If it's carelessness he's
9 not guilty.

10 So that means he's not guilty of Counts 7 and 8.

11 The last count, Count 9. She's taken all these extra
12 pills, these 90 pills, per month, and so he knows there's
13 something.

14 Now, he trusts her. The doctor is trusting her. He
15 believes she's taking the pills for the pain. And he says that
16 he did. He wanted to believe her.

17 But he takes other steps. He says get insurance. And
18 he orders a urine drug screen and he orders a pill count in
19 succession because he's suspicious. He is. He's suspicious.

20 And what does he do? He says I wanted to believe her.
21 Yes, he gives her the prescription because he wanted to believe
22 her. He knew that she had a financial situation problem. He
23 talked to her about trying to help her get a job. He talked to
24 her about the fact she didn't have a car.

25 All of those were lying statements meant to play on

1 his compassion. And he says I wanted to believe her but he was
2 going to test it. And then he does the pill count and she
3 dismisses her when she doesn't come in. Why? If he's just
4 giving her the medicine for no legitimate medical purpose and he
5 knows it all along, why discharge Anna Kingston? Why not keep
6 letting her call in the prescriptions? If you don't care, if
7 you're doing it knowingly you never would. His own conduct
8 proves he was acting in good faith. He believed this person,
9 even though he shouldn't have. He's not guilty of Count 9.

10 The next count is Ms. Valdez. And Ms. Valdez had, by
11 her own admission, terrible knee pain. By her own admission she
12 wasn't able to function. And by own her admission the medicine
13 he prescribed improved the pain. The only reason she didn't get
14 the right dose is because she didn't tell him when the side
15 effects were strong and she lied to him about -- she lied to him
16 about what pills she was taking.

17 There was a legitimate medical reason. We know that
18 because she had a legitimate pain, and it worked. If there was
19 no legitimate medical reason that he should shut down the --
20 [Indiscernible] it's over.

21 She lied about what she was taking. She lied about
22 the degree of pain. The dosage gets artificially increased by
23 lies, not by anything --

24 He's acting in good faith, she's getting better. She
25 admits he was trying to help. It's not because he did anything

1 wrong. She had a prior marijuana conviction. Government brings
2 that up. She says he talked to her about it and they worked --
3 and tried to work with her so she'd be able to take the medicine
4 anyway.

5 He's trying to help. That's a doctor acting in good
6 faith. Everybody else had failed. That's what Ms. Valdez says.
7 The other treatments all failed. But Dr. Szyman was able to
8 observe an increased mobility and Ms. Valdez is one of the
9 patients that makes it clear: I had -- my life was so much
10 better, I felt so much better with Dr. Szyman than I feel now.

11 That says Dr. Szyman had a legitimate medical purpose.
12 He was trying to pursue a course that would work for a very
13 difficult patient. There's no proof of bad faith. He's not
14 guilty of Count 10.

15 Ms. Pivonka-Dewane, she says I had a legitimate
16 debilitating back pain. It was real she said. And she says, I
17 wasn't able to function, and medicine improved the pain.

18 Now, she lied after that. But the medicine improved
19 the pain. There's a legitimate pain. That's a legitimate
20 medical purpose. That's the end of the -- again, he's not
21 guilty. He's trying to help. She lied about what she was
22 taking. She lied about her degree of pain. She manipulated her
23 drug screens. But she says and admits: I took advantage of
24 him. He was always trying to help. Any incorrect increase was
25 because of me.

1 There's a pharmacy call. She discusses it with Szyman
2 where she has too much money. Szyman can't prove that she was
3 doing anything wrong. He believes her because that's his policy
4 with his patients.

5 There's a complaint from Ms. Wolf about
6 Ms. Pivonka-Dewane. Again, there's a discussion with her. They
7 work on it. But he can't prove that Wolf is telling the truth.
8 He didn't believe it. He didn't want to believe it. He wanted
9 to believe his patient. He gives her the benefit of the doubt.
10 But she fails a pill count down the road. He dismisses her.

11 Again, there's no proof of bad faith. He's trying to
12 do the best he can with a terribly difficult patient. And when
13 he can't, when it's absolutely undeniable that there's a problem
14 he kicks her out. That's not what somebody does if they're
15 knowingly giving the medicine for a non-legitimate medical
16 purpose. You don't bother kicking them out. Why would you? He
17 is not guilty of Count 11.

18 [Indiscernible] with Mr. Peterson. Mr. Peterson's
19 condition is obvious to everyone. He cannot function. He said
20 he was like that before he went to Dr. Szyman. All kinds of
21 other treatments were tried including now. They've all failed.
22 His prescription helped with the pain.

23 So there was -- he could walk, he could mow his lawn,
24 he could work on his house. He told you all of that. There's a
25 legitimate medical purpose. Dr. Szyman can see the

1 improvements.

2 But there's a phone call about selling pills. He
3 discusses it with Dr. Szyman. Again, every one of these
4 instances when the patient gives an explanation there is no
5 proof to say the other side is telling the truth and the
6 patient's lying. He gives them the benefit of the doubt. That
7 doesn't mean he's acting in bad faith. That means he's trying
8 to trust his patients.

9 There were urine drug screen issues and Mr. Peterson
10 didn't remember them all but said whenever there would be an
11 issue with that he would talk to Dr. Szyman like he did about
12 the marijuana and they would work together. Dr. Szyman was a
13 good doctor to him. Dr. Szyman always tried to help him.
14 That's what he said. And changed his life. And it was better
15 for once. The only time since his accident. And Dr. Szyman
16 could see the improvement.

17 So did he act in bad faith? No. Can they prove he
18 was prescribed medicine knowingly thinking it was for some bad,
19 a nonmedical purpose to Mr. Peterson? No. Dr. Szyman is not
20 guilty of Count 12.

21 Ms. Wolf was Count 13. She says she's got
22 debilitating leg pain. And she admits the medication improved
23 the pain, but she lied about -- but that means there was a
24 legitimate medical purpose to improve that pain and it worked.
25 But she lies about the effect. She doesn't tell him that it's

1 too strong. She lies about what she's taking. She lies about
2 increased pain to try to get more medicine.

3 And either Ms. Wolf or Ms. Valdez, one of them said --
4 and the government's wrong about this -- one of them said, well,
5 I would lie about my pain and try to get an increase and
6 sometimes he would give and sometimes he wouldn't. So you had
7 the [Indiscernible] tried to figure out what to say.

8 But that's what they say. It wasn't like he did it
9 every time. Sometimes he would, sometimes he wouldn't,
10 depending on the dosage they were on. But the only problem with
11 Wolf's incorrect dosage is lying. The medicine works. The
12 treatment works. Her lies are the only thing that creates a
13 problem.

14 There's a report of her selling drugs. What does
15 Dr. Szyman do? He reacts immediately. He orders a urine drug
16 screen. She passes that. Now, yes, she says she manipulated
17 it, but she passes. He orders a pill count. She passes the
18 pill down. He had to witness consumption of her medication at
19 the hospital. She gets sick but she hides that fact. Hospital
20 staff [Indiscernible] she took it without incident, which means
21 her tolerance is the right level, she's taking her meds.

22 What more does Mr. Jacobs want him to do? He got a
23 report that he felt was serious. He did everything he could and
24 on every score it looked like she was taking her medicine. If
25 you're knowingly doing this, if you're knowingly giving them

1 medicine for a non-legitimate purpose, you're not gonna bother
2 with this, you're not going to have your staff watching somebody
3 taking the medicine, you know it's for a non-legitimate medical
4 purpose. There would be no reason to do a witness consumption.
5 You would know it wouldn't work.

6 What non -- either -- are they saying that he knew
7 they were going to go sell it and he wanted them to? Well, if
8 that's the case then he's not going to do this consumption.
9 [Indiscernible].

10 But he does order it. He's acting in good faith.
11 They cannot prove beyond a reasonable doubt he had anything
12 other than a medical purpose. He's not guilty of Count 13.

13 Mr. Conway admits that he suffered from significant
14 back pain and all the other treatments had failed. He admits
15 that they tried the spinal cord stimulator, they tried the pump
16 therapy, they tried physical therapy. Nothing worked.

17 But the opiates did. Over 100 MEQ, high-dose opiates
18 worked. The problem for Mr. Conway is that -- well, first of
19 all, Mr. Conway says that Dr. Szyman always tried to help him.
20 He went out of his way to be a good doctor, to be available when
21 he needed more medication or he had a problem. He met him at
22 the hospital. When he took too many pills early on he brought
23 him in the office, he had his parents come with him. They
24 worked together to get him so he could take his medicine.

25 That's not what you do if you're acting in bad faith.

1 That's not what you do if you're intending somebody and knowing
2 they're taking medicine for a non-legitimate purpose. That's
3 what you do if you care. And Mr. Conway's description of
4 Dr. Szyman, he's a doctor that cares. At every level.

5 Now, Conway admits that he had reported improvement
6 and compliance with a prescription. And he did have
7 improvement. The pain did improve. But his compliance with the
8 prescription, no, he was lying about that. But his wife was
9 with him when he reported it so Dr. Szyman had another objective
10 person in there verifying, yes, things are going great. So he's
11 acting in good faith.

12 He abused the medication and lying to Dr. Szyman, he
13 too took much when he wanted to, and he lied about the effects.
14 It was worse -- it was stronger and he was having a worse
15 reaction than he was saying.

16 But all of that doesn't change the fact Dr. Szyman
17 doesn't know any of it. He knows he says he's better, his wife
18 says he's better, and Conway admits he was better. So, you
19 know, he's not acting in bad faith. He's lying, but that
20 doesn't mean the doctor's acting in bad faith.

21 The pharmacy calls and the nurses' notes that he --
22 he's -- seems to be overly fatigued -- "obtunded" is the word
23 that we use, zombie-like. But Dr. Szyman responded to that too.
24 He ordered the sleep study because he thought there might be a
25 problem there. After the sleep study he doesn't see any other

1 problems with Mr. Conway in terms of being tired like that
2 again.

3 He's trying to make it work. So he's not acting in
4 bad faith and he's not trying to give Mr. Conway medicine for
5 some other than legitimate medical reason. It just doesn't make
6 sense for him to care that much and work so hard if that's what
7 he would do. He's not guilty of Count 14.

8 Count 15 is Heidi Buretta. By all accounts every
9 other doctor had failed in their treatment of Heidi. Physical
10 therapy failed. Pump trial failed. Spinal cord stimulator
11 failed. Everything failed. Everything was tried. High-dose
12 opioids was all that worked.

13 Dr. Szyman, he observed improvement. She was able to
14 work as a nurse. She was able to drive. She was able to buy a
15 house. She was doing great. That's what he observed. There's
16 an obvious legitimate medical purpose.

17 Dr. King said that at the dosage she would have died
18 from the medicine. But at that dosage she was hospitalized at
19 Holy Family, she received IV, a prescribed dosage through IV at
20 Holy Family, and she could talk, she could communicate. She
21 asked for more with the button if you remember Dr. Szyman's
22 testimony.

23 Nobody's saying that's not true. Nobody's saying
24 that's wrong. It's right. It's true. She had no negative
25 medical reaction. What does that mean? Her tolerance was where

1 it was supposed to be. It looked to Dr. Szyman that she was
2 taking her medicine. And there's no way for him to know she's
3 holding these pills if she's not telling him. If she can look
4 like she has that tolerance who knows what she's doing. But
5 there's no way to show -- there's no way he could have known.

6 And what amount of drugs she took, whether she took
7 the wrong amount or the wrong combination, whatever she did when
8 she died, no one knows that. But there's nothing about any of
9 that that proves he was doing anything but acting in good faith.
10 There was a tragedy that happened, but it doesn't change what he
11 did and what he saw.

12 And the government can't say he saw anything else.
13 They can't say he did anything different. He tried. And that
14 means he's not acting in bad faith and that means he's not
15 guilty of Count 15.

16 Count 16 is Debra Ramirez who had the chronic
17 headaches. She testified that she had been treated by all kinds
18 of doctors and they all failed. They tried all kinds of other
19 alternatives, including a pump therapy which was successful for
20 a while. And that suggested she wasn't selling her pills
21 because she was getting less pills through the pump therapy.
22 She wanted to do it. She said Szyman treatment helped her
23 immensely.

24 She said he -- she came in with her son often,
25 Dr. Szyman said. And her improvement was noted by everybody.

1 She lied about the degree of pain. Yes, she lied about what she
2 was taking. And the incorrect dosage was created by her lying.

3 Just like these other people. It's always the same.
4 The lying causes the problem, but the medicine works. When she
5 was reported as selling her pills Dr. Szyman assembled a group
6 of people to listen to her story and got a consensus before he
7 let her get more medication.

8 Then she sells pills to an undercover and she gets
9 dismissed from the clinic. Or sells pills to her neighbor who I
10 guess was the undercover. But whatever the case may be, then
11 she gets dismissed from the clinic.

12 So when he has proof that he can't deny, he dismisses
13 them. When he doesn't, he tries to work with them to make them
14 better. And she said, just like Mr. Peterson, that was the only
15 time in her life that she was good. She's taking 900 pills a
16 month now and it does nothing. He acted in good faith. He's
17 not guilty of Count 16.

18 Nancy Walt is exactly the same story. She had
19 orthopedists. Everybody tried these -- on these knees.
20 Orthopedist says go to Dr. Szyman, we can't help you. So what's
21 Nancy supposed to do? She had been through every kind of
22 therapy imaginable. What's she supposed to do? She suffers
23 with this knee pain that debilitates her. Or she works -- tries
24 to work with Dr. Szyman and tries something that might help.
25 And she says he's the only doctor that ever helped her.

1 And so she had a legitimate medical purpose. Her
2 report of her progress said his medication was working. That's
3 what she says. Not what he says, that's what she says. But she
4 again lied about the degree of pain, lied about what she was
5 taking so she could have a store of pills. Lying is the problem
6 again.

7 Now, she says he helped her substantially. She said
8 he was a great doctor. Years later, when she can't get anything
9 from him. Just like lots of these other people, he was always
10 trying to help. That's somebody that's acting in good faith.

11 Now, the husband complained when Dr. Szyman talked to
12 him. When he discussed it with Nancy after the fact, she said
13 it was better and the husband never called again.

14 So what's he supposed to do? He believes that it's
15 better. They cannot prove that he acted in bad faith. That was
16 the only time Nancy Walt said that her pain was under control.
17 He's not guilty of Count 17.

18 Count 18 is Chad Wenzel. He's no different. Wenzel
19 went to doctors all over the country. All of the treatment
20 failed. Nobody denies that he's referred to Dr. Szyman. And
21 Dr. Szyman puts him on high-dose opiates because it's the only
22 thing left available. Mr. Wenzel reports improvement.
23 Dr. Szyman observes improvement. There's no evidence to say he
24 does not. Mr. Wenzel didn't testify for the government.
25 There's no evidence saying that Mr. Wenzel in any respect was

1 not getting better. So there was a legitimate medical purpose.

2 There's a phone call from the mother and Dr. Szyman
3 explains Mr. Wenzel said that they were estranged and there was
4 a problem. There's no way for him to prove that Mr. Wenzel is
5 lying. He believes and takes his word for it. He's acting in
6 good faith. These charges are all the same. He's not guilty of
7 Count 18.

8 And finally, Todd Orth. Mr. Orth is a little
9 different. He had had multiple failures of therapy on
10 significant neck pain. He needed a surgery. And he said
11 Dr. Szyman's treatment lessened the pain. So there's a
12 legitimate medical purpose, period.

13 He used marijuana but he said Dr. Szyman discussed it,
14 told him he should stop, and they resolved it. He had a
15 difficulty keeping track of his doses. Dr. Szyman works with a
16 pharmacist to get it packaged for him.

17 Why? This -- over and over does he state he's going
18 out of his way to try to help these people. Why? That means
19 he's acting in good faith. If you're acting in bad faith and
20 you don't care and all you're trying to do is give them medicine
21 knowing it's not for a legitimate purpose, what is the point?
22 What is the point of going to all this trouble? There isn't
23 any.

24 He was acting in good faith. Mr. Orth plainly said he
25 was acting in good faith. Even when Mr. Orth suffered from

1 addiction, which was a result of some of this, Mr. Orth says he
2 didn't blame Dr. Szyman, he blamed the drug company because
3 Dr. Szyman was always trying to help.

4 After he had the surgery and the pain was eventually
5 more under control, Dr. Szyman worked with Mr. Orth to try to
6 help reduce the medication. And then Mr. Orth said Dr. Szyman,
7 because of this investigation, when he's no longer available,
8 then he starts struggling from withdrawal.

9 This isn't evidence Dr. Szyman was acting in bad
10 faith. He just wasn't. He saw Mr. Orth working at the tire
11 shop. Mr. Orth said I can work on the medication, I was doing
12 good.

13 There's no proof of bad faith. Yes, Mr. Orth had
14 withdrawal problems eventually, but that doesn't mean he acted
15 in bad faith. And it doesn't mean he was given the medicine for
16 some nonmedical reason. He's not guilty of Count 19.

17 So that's all of the evidence. You have seen the
18 charges, you've seen the law, and the law is clear. He's not
19 guilty on any count. He can't be if you follow the letter of
20 that law. He just can't be.

21 Out of 350 though 400 patients the government has
22 selected a tiny, tiny fraction and said that there were
23 problems. But think about this. Dr. Szyman's practicing pain
24 management with opiates, treating with opiates for years, he
25 started with the philosophy of high-dose opiates back in

1 the '90s. So in all that time, in the 350 to 400 patients in
2 just one year, consider all that time, if there is just this
3 tiny few where there's a problem -- which the evidence we have
4 is that he's doing a great job managing this situation with
5 these very difficult patients -- that's what the patients say,
6 that he was doing a great job -- their bad actions do not make a
7 doctor guilty.

8 Now, we have an opioid crisis that we are in the midst
9 of and we've heard Dr. King talk about it. And people are using
10 heroin. People are using -- lacing it with fentanyl. People
11 are overdosing. People are dying. It's a big problem. And
12 there is a obvious and logical reaction to try to find someone
13 to blame. And the government has leaned on Dr. Szyman.
14 Dr. Szyman's putting the drugs on the street.

15 No, he was not. Dr. Szyman was giving them to
16 patients who told them they were using them and admit they were
17 lying and manipulating him. They chose to put them on the
18 street. Dr. Szyman is not the person -- if they choose to put
19 them on the street, they choose to sell them, they choose to
20 lie, they choose to manipulate him, they choose to take
21 advantage of his compassion, take advantage of his decency, then
22 they are ones, the blame lies with them. Blame the people who
23 decided to do the wrong thing, don't blame the doctor who
24 decided to trust them. That blame would be misplaced.

25 You cannot transfer the blame of someone who does

1 something wrong and lies to someone else causing them to have a
2 wrong impression. You cannot transfer the blame to that other
3 person. It doesn't make sense logically, not in life and not
4 with doctors.

5 I have said earlier, this is a could-have or
6 should-have situation. Could he have been more [Indiscernible]?
7 Yes. Could he have tried things differently? Yes. So says
8 Dr. King and obviously it's true. Yes. But Dr. King has
9 something that Dr. Szyman didn't have. Dr. King has the grand
10 benefit of hindsight. And hindsight, as you know, is always
11 20/20.

12 So it's easy for Dr. King to sit back in the cheap
13 seats and pick apart the places where Dr. Szyman didn't do
14 everything as perfectly as one would like. But that doesn't
15 mean he acted in bad faith. If King's philosophy were applied
16 to these patients, any of them, any of them, all of them, none
17 of them would have ever had that increased time, that increased
18 period where their lives actually were better. They would have
19 been denied that if Dr. King was in charge.

20 Doctors can disagree about philosophy. Dr. Szyman
21 disagrees with Dr. King. Dr. King disagrees with Dr. Passik.
22 Doctors can disagree. But having a different treatment
23 philosophy, which is really what this case is about, trusting
24 too much and having a different treatment philosophy, it doesn't
25 make you guilty of a crime.

1 Acknowledging that there are financial difficulties
2 that absolutely in the real world impact what treatment is,
3 acknowledging that's real and you have to live with, you have to
4 deal with, you have to do your best, that doesn't make you
5 guilty of a crime. And as I said before, trusting too much and
6 believing too much in people doesn't make you guilty of a crime.

7 Could-haves and should-haves don't make you guilty in
8 a criminal offense. And that's all the government has,
9 could-haves and should-haves. Should have responded better than
10 this. Could have asked more questions on that. But actual
11 proof that he had a bad intention, they can't find one.

12 Now, ladies and gentlemen, I submit to you when you go
13 back to think about this case and you're thinking about some of
14 the things we've heard and some of the difficult problems that
15 these patients had, remember, Dr. Szyman was dealing with the
16 most difficult category of patients anybody could imagine.
17 People whose treatment had failed through all kinds of other
18 doctors and those doctors picked him to try to find a way.

19 And when you're in that situation, when someone's in
20 the situation of a terrible illness, whether it's a cancer
21 patient who has limited options or whether it's a patient with
22 debilitating pain who has no life because the pain has taken it
23 away, ladies and gentlemen, when you think about that I submit
24 to you that those patients do not need their doctors to be
25 detectives.

1 They do not want their doctor to be detectives who are
2 going around and looking for reasons to disbelieve them about
3 their pain and their suffering rather than focusing on what we
4 might do to fix it. We don't need doctors as detectives for
5 this category of patients, and this category of patients is the
6 only one we're talking about in this case.

7 Everybody else tried and failed. As I said earlier,
8 ladies and gentlemen, patients should have a choice. Dr. King
9 admitted to me that, yes, if it's a terminal cancer patient and
10 there's an option of very high-risk surgery, it might kill you
11 now, or there's chemotherapy with who knows what the chances
12 are. The patient should have the choice to say high-risk
13 surgery, I'll take it. And we shouldn't turn around and say,
14 well, the doctor who performs that is a criminal.

15 And when it's high, when it's pain, when it's
16 crippling pain that no other treatment works for, high-dose
17 opiates can work. We saw that. We heard that. It can work.

18 Patients should have that same choice. Just
19 because -- what Dr. Szyman said is true, the ability to live and
20 improve your quality of life shouldn't be limited to a situation
21 where it's cancer. Pain can be just as debilitating.

22 And every one of these people got to make that choice.
23 And this doctor gave them that choice. And that's something
24 that he should be lauded for doing, rather than throwing them
25 away.

1 Ladies and gentlemen, at the end I know that you think
2 back on what Dr. King says, Dr. King said that we need doctors
3 who will be --

4 Well, let me say that a different way.

5 No matter what Dr. King says, when you think about
6 this case and everything you've heard, the truth of the matter
7 is that we need doctors out there who will take on the patients
8 that have the most problems and give them a try on a therapy
9 that might work so they have some chance. We need those
10 doctors.

11 When you have a terrible illness, when you have a pain
12 that's taking away your life, you do not need a gatekeeper to
13 limit the treatments, you need a doctor who will say everybody
14 deserves a good quality of life if it is possible and will open
15 the doors to every avenue of treatment that might work. That is
16 what we need. And for these very difficult patients, for all
17 the trouble that caused him, that is what Dr. Szyman did.

18 He was very literally for these patients, like Dabien
19 Peterson, like these others, he was very literally their last
20 chance after all these failed treatments at an improved life.
21 And you heard his testimony, you heard his sincerity. He took
22 that role very, very seriously. He devoted his life to that
23 practice.

24 And ladies and gentlemen, that does not make him a
25 drug dealer. That does not make him a criminal. That makes him

1 a doctor, a doctor who did his best. It makes him not guilty.

2 THE COURT: Thank you, Mr. Brindley.

3 * * *

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified December 11, 2017.

/s/John T. Schindhelm

John T. Schindhelm

John T. Schindhelm, RPR, RMR, CRR
United States Official Reporter
517 E Wisconsin Ave., Rm 236,
Milwaukee, WI 53202
Website: WWW.JOHNSCHINDHELM.COM

